



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 2nd day of November, 1995

SERVED: November 2, 1995

BWIA International Airways Limited

Violations of 14 CFR Part 399.84
and 49 U.S.C. §41712

CONSENT ORDER

This consent order concerns violations of the Department's regulations during August 1995 by BWIA International Airways Limited (BWIA) involving its fare advertising. The advertisements in question failed to comply with section 399.84 of the Department's regulations (14 CFR 399.84) and constituted unfair and deceptive practices in violation of 49 U.S.C. §41712. This consent order directs BWIA to cease and desist from future violations and to pay a compromise civil penalty.

Section 399.84 of the Department's regulations requires that any advertising or solicitation for air transportation that states a price for such air transportation must state the entire price to be paid. When advertisements do not conform to the requirements of section 399.84, they also violate 49 U.S.C. §41712, the statutory provision which prohibits a carrier from engaging "in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation." The Office of Aviation Enforcement and Proceedings (Enforcement Office) has, as a matter of enforcement policy, permitted carriers to state separately in fare advertisements government-imposed and -approved taxes and fees collected by the carriers, such as custom fees, departure taxes, and passenger facility charges (PFCs), so long as the charges are levied and collected on a per-passenger basis and their existence and amount are clearly indicated in the advertisement. BWIA and many other carriers were recently reminded of this enforcement policy in a letter from the Assistant General Counsel for Aviation Enforcement and Proceedings dated July 14, 1995.

BWIA published an advertisement in the *New York Times* on August 13 and 16, 1995, and in the *Miami Herald* on August 20, 1995, promoting fall discount fares from New York and Miami, respectively, to various points in the Caribbean. In a small-print section separate from the listed price, the advertisement stated that "Passenger facility charges and taxes are not included in the fares." Since the BWIA advertisement did not state specifically in dollar amounts the PFCs and other taxes which the carrier chose to list separately, the advertisements do not comply with the Department's full price advertising regulations and are unfair and deceptive within the meaning of section 41712.

In mitigation, BWIA states that the carrier was privatized this past February and that significant organizational changes have since been made. One such change was to

relocate the North American marketing function from Port of Spain, Trinidad, to New York, and to hire a new individual to assume the duties of chief of North American marketing. Associated with this organizational change was the retention of a new advertising agency which will commence work shortly on BWIA's accounts. The advertisements in question were prepared by BWIA's former agency and the communications breakdown with the carrier regarding the text of the advertisement prior to its running in the newspapers, exacerbated by the transition of marketing responsibilities described above which made coordination more difficult, is unlikely to reoccur.

BWIA also states that upon receipt of a letter dated August 18, 1995, from the Aviation Consumer Protection Division of the Enforcement Office questioning the lawfulness of the advertisement, BWIA immediately took steps to mitigate any marketplace confusion. First, BWIA took immediate steps to pull the advertisements as soon as possible. At the same time, BWIA prepared and sent to all of its North American reservation agents and major travel agents, each of which had previously been advised by BWIA of the new fare promotion, a notice stating the range of applicable PFCs and government taxes and fees.

BWIA also observed that although the dollar range of the PFCs and taxes was not provided, their existence and applicability were stated in the advertisement. In addition, BWIA notes that, by virtue of the fact that the fare required a minimum two-day advance purchase, in each instance in which a passenger responded to the advertisement, the passenger was advised of the total purchase price, including the PFCs and taxes, when the tickets were purchased.

After carefully considering all the facts in this matter, including BWIA's explanation, we continue to believe that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the alleged violations, BWIA has agreed to a settlement of this matter with the Enforcement Office. BWIA consents to the issuance of an order to cease and desist from future violations of section 399.84 of the Department's regulations and to an assessment of \$10,000 in compromise of potential civil penalties. Of this amount, \$5,000 shall be paid within 15 days of the date of issuance of this order. The remaining \$5,000 shall be suspended for one year following the issuance date of this order and shall be forgiven unless BWIA fails to comply with the payment provisions of this order, or commits other violations of section 399.84 or this order during the year, in which case the entire unpaid portion of the \$10,000 assessed penalty shall become due and payable immediately.

We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. It represents an adequate deterrence to future noncompliance with our deceptive advertising regulations and 49 U.S.C. §41712 by BWIA, as well as by other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that BWIA International Airways Limited violated 14 CFR 399.84 by advertising a fare which failed to state the total price to be paid;

3. We find that by engaging in the conduct described in paragraph 2, above, BWIA International Airways Limited engaged in unfair and deceptive practices in violation of 49 U.S.C. §41712;
4. BWIA International Airways Limited and all other entities owned or controlled by or under common ownership with BWIA International Airways Limited, and their successors and assignees, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. §41712;
5. BWIA International Airways Limited is assessed \$10,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this amount, \$5,000 shall be paid within 15 days of the date of issuance of this order. The remaining \$5,000 shall be suspended for one year following the issuance date of this order and shall be forgiven unless BWIA International Airways Limited fails to comply with the payment provisions of this order, or commits other violations of section 399.84 or this order during the year following issuance of the order, in which case the entire unpaid portion of the \$10,000 assessed penalty shall become due and payable immediately and BWIA will be subject to further enforcement action; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject BWIA International Airways Limited to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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